

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 816
93RD GENERAL ASSEMBLY

Reported from the Committee on Commerce, Energy and the Environment, February 23, 2006, with recommendation that the Senate Committee Substitute do pass.

3909S.11C

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 67, RSMo, by adding thereto six new sections relating to the fair competition in video act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 67, RSMo, is amended by adding thereto six new sections, to be known as sections 67.2675, 67.2677, 67.2679, 67.2681, 67.2683, and 67.2685, to read as follows:

67.2675. Sections 67.2675 to 67.2685 shall be known and may be cited as the "Fair Competition in Video Act".

67.2677. For purposes of sections 67.2675 to 67.2685, the following terms mean:

(1) "Basic local exchange telecommunications service", as defined in subdivision (4) of section 386.020, RSMo;

(2) "Cable operator", as defined in 47 U.S.C. Section 522(5). Cable operator does not include a provider of wireless or direct-to-home satellite transmission service;

(3) "Cable service", as defined in 47 U.S.C. Section 522(6);

(4) "Cable system", as defined in 47 U.S.C. Section 522(7);

(5) "Competitive video service provider", an entity providing video service that is not franchised as a cable operator in Missouri as of the effective date of sections 67.2675 to 67.2685 and is not an affiliate, successor, or assign of such cable operator;

(6) "Franchise", an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the

18 **construction and operation of a cable system;**

19 **(7) "Franchise entity", a political subdivision entitled to require**
20 **franchises and impose fees on cable operators;**

21 **(8) "Incumbent cable operator", the cable service provider serving**
22 **the largest number of cable subscribers in a particular franchise area on**
23 **September 1, 2006;**

24 **(9) "Incumbent local exchange telecommunications company", as**
25 **defined in subdivision (22) of section 386.020, RSMo;**

26 **(10) "Political subdivision", a city, town, village, county, or any**
27 **agency or unit of the state;**

28 **(11) "Video programming", programming provided by, or generally**
29 **considered comparable to programming provided by, a television**
30 **broadcast station, as set forth in 47 U.S.C. Section 522(20);**

31 **(12) "Video service", video programming services provided through**
32 **wireline facilities located at least in part in the public rights-of-way**
33 **without regard to delivery technology, including Internet protocol**
34 **technology. This definition does not include any video programming**
35 **provided by a commercial mobile service provider defined in 47 U.S.C.**
36 **Section 332(d);**

37 **(13) "Video service authorization", the right of a competitive video**
38 **service provider and, after expiration of its existing franchise**
39 **agreement, any incumbent cable operator that secures permission from**
40 **the public service commission, to offer video programming to any**
41 **subscribers anywhere in the state; and**

42 **(14) "Video service provider fee", the fee imposed under section**
43 **67.2681.**

67.2679. 1. The following entities shall possess a video service
2 **authorization:**

3 **(1) Any entity authorized to provide local exchange**
4 **telecommunications services in Missouri that is authorized by the public**
5 **service commission under sections 67.2675 to 67.2685;**

6 **(2) An incumbent cable operator, after the expiration date of its**
7 **existing franchise, that is authorized by the public service commission**
8 **under sections 67.2675 to 67.2685 in the franchise area; and**

9 **(3) Any other competitive video service provider that is**
10 **authorized by the public service commission under sections 67.2675 to**
11 **67.2685.**

12 **2. The public service commission shall promulgate rules to govern**
13 **the application process for entities seeking a video service authorization**
14 **under subdivision (3) of subsection 1 of this section, provided that any**
15 **application process shall be determined within thirty days of a**
16 **request. Any rule or portion of a rule, as that term is defined in section**
17 **536.010, RSMo, that is created under the authority delegated in this**
18 **section shall become effective only if it complies with and is subject to**
19 **all of the provisions of chapter 536, RSMo, and, if applicable, section**
20 **536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
21 **and if any of the powers vested with the general assembly pursuant to**
22 **chapter 536, RSMo, to review, to delay the effective date, or to**
23 **disapprove and annul a rule are subsequently held unconstitutional,**
24 **then the grant of rulemaking authority and any rule proposed or**
25 **adopted after August 28, 2006, shall be invalid and void. To the extent**
26 **required by applicable law, any video service authorization granted by**
27 **sections 67.2675 to 67.2685 or by the public service commission shall**
28 **constitute a franchise for purposes of 47 U.S.C. Section 541(b)(1). To the**
29 **extent required for purposes of 47 U.S.C. Sections 521 to 561, the state**
30 **of Missouri shall constitute the exclusive franchising authority for**
31 **competitive video service providers in Missouri.**

32 **3. No franchise entity or other political subdivision of the state**
33 **of Missouri may either require a competitive video service provider to**
34 **obtain a separate franchise to provide video service or otherwise impose**
35 **any fee, license, gross receipt tax, or franchise requirement on any**
36 **competitive video service provider or request anything of value in**
37 **exchange for providing video services except as provided in sections**
38 **67.2675 to 67.2685 or in sections 67.1830 to 67.1846, RSMo. For purposes**
39 **of this section, a franchise requirement includes, without limitation, any**
40 **provision regulating rates charged by competitive video service**
41 **providers or requiring competitive video service providers to satisfy any**
42 **build-out requirements or deploy any facilities or equipment.**

43 **4. Competitive video service providers shall provide distribution**
44 **capacity and make all reasonable efforts to retransmit community**
45 **programming and emergency interrupt service already being**
46 **transmitted by the incumbent cable operator. If a competitive video**
47 **service provider is unable for technical reasons to retransmit community**
48 **programming or emergency interrupt service, the provider shall notify**

49 the commission in writing of the technical difficulty and disclose to all
50 potential consumers that its service will not include community
51 programming or emergency interrupt service. The commission may, on
52 its own order or in response to a complaint, order the competitive
53 service provider to address the technical difficulties and retransmit
54 community programming and emergency interrupt service after a
55 reasonable period of time.

56 5. Any entity that elects or seeks a video service authorization
57 under this section shall describe the service area to be served in its
58 application to the public service commission. An entity holding a video
59 service authorization may amend its service area upon notice to the
60 public service commission. Except as provided in this section, a service
61 area shall include the entirety of any municipality located within the
62 service area, and may include nonincorporated areas. An incumbent
63 local exchange telecommunications company may limit its service area
64 within a municipality to that portion where it offers basic local
65 exchange telecommunications service.

66 6. The public service commission shall issue a certificate of video
67 service authorization on or before the thirtieth date after receipt of a
68 completed affidavit submitted by the applicant and signed by an officer
69 or general partner of the applicant affirming:

70 (1) That the applicant has filed or will timely file with the Federal
71 Communications Commission all forms required by that agency in
72 advance of offering video service;

73 (2) That the applicant agrees to comply with all applicable federal
74 and state statutes and regulations;

75 (3) That the applicant agrees to comply with applicable
76 regulations concerning use of the public rights-of-way as provided in
77 sections 67.1830 to 67.1846, RSMo;

78 (4) A description of the designated service area consistent with
79 the provisions of subsection 5 of this section; and

80 (5) The location of the applicant's principal place of business and
81 the names of the applicant's executive officers.

67.2681. 1. An entity holding a video service authorization shall
2 provide notice to each franchise entity with jurisdiction in any locality
3 at least ten days before providing video service in the franchise entity's
4 jurisdiction.

5 2. In any political subdivision in which an entity possessing a
6 video service authorization provides video service, the entity shall
7 calculate and pay the video service provider fee to the political
8 subdivision if a cable operator offering video service pays a franchise fee
9 to such franchise entity. The franchising entity may not demand any
10 additional fees, licenses, gross receipt taxes, or charges from the
11 competitive video service provider and may not demand the use of any
12 other calculation method. At the expiration of an existing franchise, if
13 an incumbent cable operator elects to possess a video service
14 authorization, all entities holding a video service authorization shall pay
15 the video service provider fee at the same percent of gross revenue as
16 had been assessed immediately prior to the termination of the
17 incumbent cable operator's franchise.

18 3. The video service provider fee shall be paid to political
19 subdivisions on a quarterly basis and shall be calculated as a percentage
20 of gross revenues, as defined herein.

21 4. The percentage to be applied against gross revenues under
22 subsection 2 of this section may in no event exceed the lesser of either
23 five percent or the percentage levied as a gross receipts franchise fee on
24 any cable operator providing video service within the franchise entity's
25 jurisdiction.

26 5. For purposes of this section, a franchise entity shall have the
27 authority to audit any entity holding a video service authorization
28 which provides video services to subscribers within the franchise
29 entity's jurisdiction. Any entity holding a video service authorization
30 shall, upon request of the franchise entity, make available for inspection,
31 by the franchise entity, all records pertaining to services provided and
32 taxes paid or owed to such franchise entity or consumers located within
33 the jurisdiction of the franchise entity. Any expenses incurred by a
34 franchise entity in conducting an audit of an entity holding a video
35 service authorization shall be paid by the franchise entity.

36 6. Gross revenues are limited to amounts billed to video service
37 subscribers for the following:

- 38 (1) Recurring charges for video service;
- 39 (2) Event-based charges for video service, including but not
40 limited to pay-per-view and video-on-demand charges;
- 41 (3) Rental of set top boxes and other video service equipment;

42 (4) Service charges related to the provision of video service,
43 including but not limited to activation, installation, repair, and
44 maintenance charges; and

45 (5) Administrative charges related to the provision of video
46 service, including but not limited to service order and service
47 termination charges.

48 7. Gross revenues do not include:

49 (1) Discounts, refunds, and other price adjustments that reduce
50 the amount of compensation received by a competitive video service
51 provider;

52 (2) Uncollectibles;

53 (3) Late payment fees;

54 (4) Amounts billed to video service subscribers to recover taxes,
55 fees, or surcharges imposed on competitive video service subscribers in
56 connection with the provision of video services, including the video
57 service provider fee authorized by this section; or

58 (5) Charges, other than those described in subsection 6 of this
59 section, that are aggregated or bundled with amounts billed to video
60 service subscribers, if the competitive video service provider reasonably
61 can identify such charges on books and records kept in the regular
62 course of business or by other reasonable means.

63 8. Any competitive video service provider may identify and collect
64 the amount of the video service provider fee as a separate line item on
65 the regular bill of each subscriber.

67.2683. 1. The provisions of sections 67.2675 to 67.2685 are
2 intended to be consistent with the Federal Cable Act, 47 U.S.C. Section
3 521, et seq.

4 2. Nothing in sections 67.2675 to 67.2685 shall be interpreted to
5 prevent a competitive video service provider, a cable operator, or a
6 franchise entity from seeking clarification of its rights and obligations
7 under federal law or to exercise any right or authority under federal or
8 state law.

9 3. An entity holding a video service authorization may not deny
10 access to service to any group of potential residential subscribers within
11 its service area because of the income of the residents in the local area
12 in which such group resides.

13 4. An entity holding a video service authorization shall have a

14 reasonable period of time to become capable of providing service to
15 those residential customers within its designated service area.

16 5. A competitive video service provider shall be subject to the
17 provisions of sections 67.1830 to 67.1847, RSMo.

18 6. A competitive video service provider shall be subject to the
19 provisions of section 227.240, RSMo, pertaining to cable television
20 providers.

21 7. Nothing in sections 67.2675 to 67.2685 is intended to alter any
22 of the terms of any existing franchise agreement between a cable
23 operator and a franchising entity.

24 8. The public service commission shall, no later than August 28,
25 2010, issue a report describing the status of competition in the
26 provisions of video services and shall make such recommendations to the
27 general assembly as it deems appropriate to increase competition and
28 benefit consumers in the provision of such services. The report shall
29 address, but not be limited to, any need to require competitive video
30 service providers to expand service or meet certain build-out
31 requirements.

67.2685. Notwithstanding the provisions of section 1.140, RSMo,
2 to the contrary, the provisions of this act shall be nonseverable, and if
3 any provision is for any reason held to be invalid, such decision shall
4 invalidate all of the remaining provisions of this act.

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